

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the matter of:)	
)	
Central Ohio Association of)	CSR-8754-M
Christian Broadcasters)	Docket No. 12-366
)	
Must-Carry Complaint Regarding)	
Qualified Low Power Television)	
Station WOCB-CD, Marion, Ohio)	

MEMORANDUM OPINION AND ORDER

Adopted: April 19, 2013

Released: April 19, 2013

By the Senior Deputy Chief, Policy Division, Media Bureau:

I. INTRODUCTION

1. Central Ohio Association of Christian Broadcasters, licensee of low power television station WOCB-CD, Marion, Ohio (“WOCB”), filed the above-captioned complaint against Time Warner Cable Inc. (“TWC”) for failure to carry WOCB on TWC’s cable systems serving various communities in Ohio.¹ TWC filed an opposition to the complaint, to which WOCB responded. For the reasons below, we dismiss WOCB’s complaint.

II. BACKGROUND

2. Under the Communications Act of 1934, as amended, and the Commission’s rules, qualified low power television (“LPTV”) stations are entitled to mandatory carriage in certain limited circumstances.² An LPTV station that conforms to the rules established for LPTV stations in Part 74 of the Commission’s rules will be considered qualified if: (1) it broadcasts at least the minimum number of hours required pursuant to 47 C.F.R. Part 73; (2) it adheres to Commission requirements regarding non-entertainment programming and employment practices, and the Commission determines that the programming of the LPTV station addresses local news and informational needs that are not being adequately served by full power television broadcast stations because of the geographic distance of such full power stations from the low power station’s community of license; (3) it complies with interference regulations consistent with its secondary status; (4) it is located no more than 35 miles from the cable system’s principal headend and delivers to that headend an over-the-air signal of good quality; (5) the community of license of the station and the franchise area of the cable system were both located outside the largest 160 Metropolitan Statistical Areas on June 30, 1990, and the population of such community of license on that date did not exceed 35,000; and (6) there is no full power television broadcast station licensed to any community within the county or other political subdivision (of a State) served by the cable system.³

¹ The communities at issue are 132 incorporated and unincorporated areas in Champaign, Coshocton, Crawford, Hardin, Hocking, Knox, Logan, Marion, Morgan, Perry, and Wyandot counties.

² 47 U.S.C. § 534(c)(1); 47 C.F.R. § 76.56(b)(3).

³ 47 U.S.C. § 534(h)(2); 47 C.F.R. § 76.55(d).

III. DISCUSSION

3. In its complaint, WOCB claims that it is a qualified LPTV station, and seeks mandatory carriage on TWC's Marion, Ohio and Columbus, Ohio systems.⁴ With regard to the Marion system, TWC replies that it has never denied a request for carriage by WOCB, and states that it is currently carrying the station on that system.⁵ WOCB concedes this fact, but requests that the Commission reaffirm such carriage rights.⁶ We decline to do so at this time. As there is no present dispute concerning the carriage of WOCB on the Marion system, there is no basis for a must carry complaint with respect to the communities served by that system. That portion of this complaint is dismissed.

4. As regards the Columbus system, WOCB states that it believes it provides a good quality signal to TWC's Columbus headend.⁷ In its opposition to the complaint, TWC provides test results indicating that WOCB's signal strength at the Columbus headend is no greater than -67.75 dBm.⁸ The Commission has determined that -61 dBm is the signal strength necessary to provide a good quality digital signal at a cable system's principal headend.⁹ WOCB states in its response that it is willing to pay for fiber carriage to the Columbus headend to ensure a signal of sufficient strength.¹⁰ However, as TWC correctly argues,¹¹ unlike full power television stations, LPTV stations such as WOCB are not permitted to cure a low quality signal with additional specialized equipment at a cable headend.¹²

5. TWC also argues WOCB does not qualify for mandatory carriage because it fails the second prong of Section 76.55(d) in that the "local news and informational needs" of a vast majority of the communities in Champaign, Coshocton, Crawford, Hardin, Hocking, Knox, Logan, Morgan, and Perry are being adequately met by an "abundance of local news, community and other local programming" provided by full power television stations much closer to the communities than WOCB.¹³ Under section 76.55(d) of the Commission's rules, an LPTV station must first make a *prima facie* showing that it is providing locally-focused programming directed to the communities it seeks to serve, and it thereby shifts the burden to the cable operator to show that the neighboring full-power stations adequately provide subscribers with local programming.¹⁴ General assertions by a cable operator that full-power stations it carries have stories addressing the local issues of the communities are not sufficient in the face of an LPTV station's *prima facie* case,¹⁵ nor can the service provided by the full-power stations be considered superior merely because of their closer proximity to the communities at issue.¹⁶ However, other than

⁴ WOCB Complaint at 5-6.

⁵ TWC Opposition at 1-2.

⁶ WOCB Complaint at 1, 5; WOCB Response at 3.

⁷ WOCB Complaint at 4.

⁸ TWC Opposition at Exh. C.

⁹ See *Carriage of Digital Television Broadcast Signals: Amendment to Part 76 of the Commission's Rules*, CS Docket No. 98-120, Declaratory Order, 23 FCC Rcd 14254, 14261-62, ¶ 21 (2008).

¹⁰ WOCB Response at 2.

¹¹ TWC Opposition at 3 n.6.

¹² *Implementation of the Cable Television Consumer Protection and Competition Act of 1992, Broadcast Signal Carriage Issues*, 8 FCC Rcd 2965, 2991 ¶ 104 (1993).

¹³ TWC Opposition at 6 (citing Exh. G – Distance Calculation Worksheets).

¹⁴ See *Smith v. Cable One, Inc.*, 18 FCC Rcd 9970, 9972 ¶ 7 (MB 2003).

¹⁵ See *id.* (citing *In re American Television, Inc.*, 14 FCC Rcd 8842, 8846 ¶ 13 (MB 1999)).

¹⁶ See *id.* at 9973 ¶ 10. Accordingly, TWC's distance calculation worksheets would be insufficient evidence to show that its full-power stations serve the local news and informational needs of the residents in the communities.

general descriptions of the types of programming it airs, WOCB has failed to introduce any programming logs or other evidence supporting its contention that it provides local news and informational programming directed to the contested communities.¹⁷ Accordingly, although we dismiss this matter due to WOCB's failure to provide a good quality signal, WOCB would not be qualified to be carried in these communities without a stronger showing.

6. Finally, for the first time in its reply, WOCB raises that TWC previously consolidated its headends in Kenton, Ashley and Johnstown, Ohio, thereby averting its obligation to carry WOCB on systems served from those headends, and that it believes TWC will also soon tear down its Marion headend and require carriage from its Columbus headend, destroying its carriage therein.¹⁸ It asks us to ensure that TWC will not move its Marion headend, as TWC has "already undermined or evaded [WOCB's] rights to must carry in [Johnstown, Kenton and Ashley, Ohio] by moving its principal headend."¹⁹ It is true that when a cable system elects a principal headend, it may not change that election without good cause.²⁰ However, WOCB has provided insufficient evidence in the record to lead us to conclude that TWC's consolidation or elimination of certain headends involved moving its principal headend or that TWC's designation of Columbus, Ohio as its principal headend was made to avoid its mandatory carriage responsibilities.

7. Because WOCB fails to provide a good quality signal to the principal headend of TWC's Columbus system, we find that WOCB is not a qualified LPTV station with respect to that system, and therefore it is not entitled to mandatory carriage therein.

IV. ORDERING CLAUSES

8. Accordingly, **IT IS ORDERED**, pursuant to Section 614 of the Communications Act of 1934, as amended, 47 U.S.C. § 534, and Sections 76.55(d) and 76.56(b)(3) of the Commission's rules,²¹ that the must carry complaint filed by Central Ohio Association of Christian Broadcasters **IS DENIED**.

9. This action is taken pursuant to authority delegated by Section 0.283 of the Commission's rules.²²

FEDERAL COMMUNICATIONS COMMISSION

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¹⁷ See *Schrecongost v. TCI of Penn., Inc.*, 12 FCC Rcd 13194, 13200 ¶15 (MB 1997), *aff'd* 19 FCC Rcd 5779 (2004). The Commission has stated, "[p]rogram logs are not required...information certainly can be presented through other forms of evidence, but the salient information provided in the showing must be specific as to the type of programming provided and the number of hours per week such programming is provided." 19 FCC Rcd at 5783 ¶ 9.

¹⁸ WOCB Reponse at 3.

¹⁹ See *id.*

²⁰ 47 C.F.R. § 76.5(pp)(2).

²¹ 47 C.F.R. §§ 76.55(d), 76.56(b)(3).

²² 47 C.F.R. § 0.283.